

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
CIVIL CASE NO. 1:18-cv-00302-MR
[CRIMINAL CASE NO. 1:16-cr-00051-MR-WCM-2]**

SAMUEL ZUNIGA MEDINA,)
)
Petitioner,)
)
vs.)
)
UNITED STATES OF AMERICA,)
)
Respondent.)
)

)

O R D E R

THIS MATTER is before the Court on Petitioner's Motion to Supplement his Motion to Vacate, filed pursuant to 28 U.S.C. § 2255. [Doc. 5]. For the following reasons, the Court denies the motion.

Petitioner pleaded guilty to conspiracy to distribute methamphetamine and was sentenced to 188 months of imprisonment. [Crim. Case No. 1:16-cr-00051-MR-WCM-2 ("CR"), Doc. 125: Judgment]. Petitioner appealed, and the Fourth Circuit subsequently dismissed the appeal. [CR Doc. 138]. Petitioner filed the pending motion to vacate on October 25, 2018, raising a claim of ineffective assistance of counsel and a claim for a due process violation. [Doc. 1]. After the Government filed its Response, Petitioner filed the pending motion to supplement, seeking relief under the First Step Act of

2018, Pub. Law 115-391 (S. 756), 132 Stat. 5194 (enacted Dec. 21, 2018).

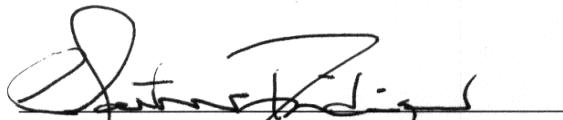
Petitioner contends that he is eligible for a sentence reduction under Section 402(a) of the Act, “relating to the broadening of existing safety valve.” [Doc. 5 at 1].

Petitioner is not entitled to relief under Section 2255 through his motion to supplement. Petitioner purports to raise a claim that is in substance one of sentencing relief under 18 U.S.C. § 3852(c)(1)(B), and Petitioner must seek such relief on this claim, if at all, by filing a motion in his criminal case. Thus, the Court will deny Petitioner’s motion without prejudice to Petitioner to bring a motion for reduction of sentence in his underlying criminal action.

IT IS, THEREFORE, ORDERED that Petitioner’s Motion to Supplement [Doc. 5] is denied without prejudice to Petitioner to bring a motion for reduction of sentence in his underlying criminal action.

IT IS SO ORDERED.

Signed: February 5, 2019



Martin Reidinger
United States District Judge

